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Sacramento, California, January 16,
1958.

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California. Legislative Assembly. Interim
Committee on Revenue and Taxation.

TRANSCRIPT OF PROCEEDINGS

SUBCOMMITTEE ON SALES AND USE TAXES,

OF THE

ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION

State Capitol
Sacramento, California,
January 16, 1958

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SUBCOMMITTEE ON SALES AND USE TAXES
State Capitol, Sacramento
January 16, 1958

MEMBERS PRESENT:

Augustus F. Hawkins, Chairman
John L. E. Collier
Carl A. Britschgi
Alan G. Pattee

ALSO PRESENT:

S. C. Masterson:

ASSEMBLYMAN AUGUSTUS F. HAWKINS: The meeting will come to order.

This is the Subcommittee on Sales and Use Taxes of the Assembly Interim Committee on Revenue and Taxation, created under the general authority of House Resolution No. 238 of the 1957 General Session.

The chairman of the full committee is Assemblyman Walter Dahl who cannot be with us today. I am Augustus Hawkins from Los Angeles, chairman of this subcommittee.

With me on the subcommittee are: Assemblymen John L. E. Collier from Los Angeles, Carl Britschgi from Redwood City, and Alan Pattee of Salinas. Absent today is Frank G. Bonelli.

We are charged with studying Assembly Bills 447 and 3118 today. Assembly Bill 447 would impose a use tax upon personal property

used in fulfilling a construction contract for improvements to real estate where the property loses its identity and where no sales or use tax has been paid.

Assembly Bill 3118 would exempt from the sales tax trailer coaches purchased for use solely outside of California and removed from the State within 30 days of the date of sale.

Assembly Bill 1470, relative to the motor vehicle fuel tax and the use fuel tax, which was originally scheduled for this hearing, has been deleted from the agenda at the request of the author and will be heard at a later date.

I would like to mention at this time that bills are referred for interim study when it is felt that more background information should be obtained. Your testimony today will be recorded and a report will be made to the full committee. This hearing may or may not result in new legislation. That decision will be up to the full committee.

At this time I would like to read a few of the letters and telegrams which I have received with respect to some of the bills which were scheduled for hearing today.

I have received from Mr. William B. Parks, President of the Newhall Refining Company a telegram generally in favor of Assembly Bill 1470. I'll just file that with the secretary and it can be introduced. I had a request from Assemblyman Miller that Mr. Parks be included, and we did include him, but he apparently cannot be present and has sent this telegram.

(SEE EXHIBIT "A".)

I also have a letter from Mr. Dahl requesting that Assembly Bill 1470 be removed, and I'll also introduce that into the record. (SEE EXHIBIT "B".)

We also have a letter addressed to Mrs. Raty as secretary of the committee from the League of California Cities. I won't read this. I'll introduce it into the record. I will simply state for the sake of the record at this time that it is generally in opposition to any public tax exemptions and specifically opposes Assembly Bill 1470 and is signed by Mr. Richard Carpenter, Executive Director and General Counsel, League of California Cities. (SEE EXHIBIT "C".)

We also have a letter from the Department of Finance signed by Mr. Peirce, but I assume that the contents of this letter will be discussed by Mr. Currie, and possibly explained even better than the letter itself, so I will simply file this letter from Mr. Peirce with the secretary to be incorporated into the report of this subcommittee. I am sure that Mr. Currie will give the explanation that this letter does.

At this time I would like to call on Mr. Currie who represents the State Department of Finance for his statement which I assume will parallel this letter.

MR. RALPH CURRIE: Thank you, Mr. Hawkins. I would like to read both the letter from Mr. Peirce to you, Mr. Hawkins, and our statement with respect to the two bills which you will consider. The letter is dated January 3, 1958:

"Attached are statements by this Department regarding Assembly Bills 447, 1470 and 3118, scheduled for hearing before your sub-committee on January 16, 1958.

"As I am sure you know from your long experience in the

Legislature, the State Department of Finance takes a general position in opposition to sales tax exemptions. We are convinced that each exemption creates more new inequities than are corrected, with the result that the sales tax base is subject to a progressive erosion which ultimately would destroy this levy as the chief source of General Fund revenue. For example, as originally enacted in 1933 the sales tax statute contained five exemptions. In 1935 another was added covering food products for human consumption, other than meals. In the intervening years seven other exemptions have been added all arising out of the 1935 action. The same chain reaction can be traced in connection with vessels and ship repair, newspapers and periodicals, aircraft, silver bullion, containers, and sales to instrumentalities of the Federal Government. In fact the great majority of the present 26 sales tax exemptions have arisen because of some previous exemption.

"In view of the demands made upon the General Fund for support of education, social welfare, resource development, industrial welfare and operation of the legislative, judicial, executive and administrative departments of the State Government it is essential that a broad, pay-as-you-go tax be maintained as the bulwark of our tax structure. Until a levy can be found which fills this need better and more efficiently, it is of vital importance that the sales tax be protected and strengthened wherever possible."

And then with respect to the two bills which you are considering, do you have any choice of which is to be discussed first?

CHAIRMAN HAWKINS: We have scheduled on the agenda A.B. 447 to be discussed first, Mr. Currie.

MR. CURRIE: We have no opposition to A.B. 447. We just want to make two observations with respect to the bill in its present form.

Assembly Bill 447 would impose the use tax upon tangible personal property utilized in fulfilling construction contracts where the property loses its identity in the construction process and where no sales or use tax has been paid. The proposal was advanced in an effort to equalize the tax advantage enjoyed by an integrated firm which fabricates certain construction items and uses this material in fulfilling a contract to improve real estate. Under present law, no tax is paid on such items, whereas a contractor who purchases them

already fabricated must pay either sales or use tax. An estimate of the General Fund revenue effect is not available.

This proposal was before the Legislature in somewhat different form at the 1949 General Session as Senate Bill 1207. Although that bill was amended twice, no final action was taken in either House. The former proposal would appear to have two advantages over A.B. 447 in its present form. First, Senate Bill 1207 would have amended the Revenue and Taxation Code Section 6011 to provide that the sales price shall include, and this quotes from the bill, the subsection (c) that was proposed, any expense of manufacture, fabrication and processing incurred by a person with respect to property used by him in the performance of a contract to improve real property, not including, however, the expense of assembling, installing and applying the property at the site of the improvement to real property.

On this point, A.B. 447 in lines 16 through 21 provides that the basis of the use tax on materials produced by constructors and used in improvements to real estate shall be the sales price at which such materials first entered into commerce. If such materials are not sold in commerce by said producers, then the basis of the tax shall be the sales price at which similar materials were sold in commerce.

This latter definition is ambiguous in that the phrase "first entered into commerce" could be construed to mean the price of raw materials from which the construction materials were fabricated or manufactured. If this were the case, an integrated firm would retain a distinct advantage over nonintegrated establishments. Moreover, it is possible that under this interpretation there would be a loss in revenue, if this legislation were enacted.

Second, S.B. 1207 contained a provision making its effect entirely prospective and disclaiming applicability to contracts entered into prior to a specified date. This would be a desirable feature in any legislation on this subject.

Except with regard to the closing of a possible loophole in the definition of the selling price or the basis of the use tax and a feature making the provision prospective, the Department of Finance does not have a recommendation in respect to A.B. 447.

CHAIRMAN HAWKINS: Perhaps, Mr. Currie, it would be better if we discussed with you the general position of the Department of Finance, then call the sponsor or at least one of the witnesses in support of A.B. 447 and then perhaps questions may develop after that. I mean I think largely it's a question of clarifying the language as to just what A.B. 447 does. I think that possibly the sponsors of the legislation would be in a better position to cite examples, and then perhaps we'll have some questions to ask you. Now at this particular time, is there any question that members of the committee would like to ask with respect to the general position of the Department of Finance or tax exemptions of any kind? Thank you Mr. Currie.

I have listed Mr. John Bosche, attorney representing the Kaiser Industries. We would like to receive testimony from you, please.

MR. JOHN BOSCHE: Mr. Chairman, I have a prepared statement which I would like to read.

Kaiser Industries Corporation and its affiliated companies are opposed to the enactment of Assembly Bill No. 447 for two basic reasons: First of all, the bill presents many fundamental problems of interpretation which make it virtually unworkable in its application

to ordinary commercial transactions which it affects. Mr. Currie, I think, touched on some of them. I would like to enlarge on his remarks.

The tax is imposed on the value, measured by sales price, of specific construction materials at the moment when they first enter into commerce. Assuming first of all that the word "commerce" means the equivalent of shipment, the next question presented is when does the "material" assume its identity for tax purposes? In most cases construction materials, such as a steel beam, a piece of lumber or a cubic yard of wet mix, originate in the form of natural resources which undergo changes at various processing points until they emerge in the form of finished products which eventually are incorporated into real property. For example, a piece of structural steel starts out as iron ore and then progressively changes to pig iron, steel ingots, and steel beams, which are later sheared, shaped, perforated and finally painted. All of these processing operations may take place at different points including the job site which would require a movement of the material in commerce between each processing operation.

Under the foregoing example and in the case of most other construction materials, it is essential to determine from the language of the bill at what particular point in the manufacturing and fabricating process the "material" comes into existence for tax purposes in order to determine when the tax is to be applied. The bill, however, provides no guide and the taxpayer and administrative agency are left in the dark as to which of the various shipments will result in the imposition of the tax. This determination is extremely important because the tax base and the resulting tax increases as each

processing operation adds value to the product.

Another problem arises where the processing operation, which eventually identifies the material for tax purposes, is undertaken at the job site. In such cases the bill would apparently impose no tax inasmuch as the material does not enter commerce until after it has come into existence.

In cases where the material is not sold, the tax is based on the "sales price of similar material". What happens when there is no similar material or when there is more than one? After a "similar material" has been found, how is its price to be determined - by a single sale nearest to the time of shipment of the material whose tax base is being sought, or by an averaging method if there are variations in such prices, or by some other method? Finally, should the FOB point of sale in case of heavy commodities have any bearing on this determination?

Another problem that arises in interpretation relates to the definition of "purchase". The tax proposed by this bill is applicable only if the "property used in fulfilling the contract was not purchased from another." Does it matter if this purchase took place in another state and what constitutes a "purchase" within the meaning of the bill in cases where only some or substantially all raw materials used in manufacturing are purchased by the contractor. For example, does the purchase of some or all of the iron ore or the alloys which end up in a piece of structural steel constitute a purchase within the meaning of the bill, or must the purchase take place at a later stage of production in order to obtain exemption from the proposed tax? Now these statements are confined more or less to the interpretation and application of the bill as we understand it or as we read it. We

have another very basic objection to the bill and that relates to its purpose. The declared legislative purpose of placing California contractors on equal footing with out-of-state contractors is not valid because the out-of-state contractors as such do not enjoy a competitive sales tax advantage over their California counterparts. A contractor with an integrated fabrication and contracting operation may, in some instances, enjoy such a tax advantage. Such integrated operations, however, are not delineated by State boundaries.

On the other hand, if it is the objective of this bill to equalize the tax burden between the integrated and nonintegrated contractor, this it does not accomplish. Equality of the tax burden among contractors can only be achieved if a particular item of material used by competing contractors will produce the same tax, and this cannot occur if the measure of the tax is permitted to vary as it inevitably must if it is imposed at various stages of the production process.

This can perhaps be illustrated through an example. Suppose two contractors are competing on a dam construction or foundation project which requires large quantities of concrete. One contractor owns a batch plant at the site and can generate or purchase his aggregates at a nearby location and also purchase his cement FOB the producing mill. Such contractor should pay a tax of not more than approximately 16¢ per cubic yard of concrete. The other contractor buys readymix or dry batch concrete at the site and will have to pay a sales tax of approximately 40¢ per cubic yard.

In another example, which also illustrates this point, two contractors require structural steel to fulfill a construction contract. One purchases his requirements of steel FOB the producing mill for a

price of approximately \$132.00 per ton and thereafter transports, shears, shapes, bends, perforates and paints the steel, thus adding approximately 11¢ per pound or \$220.00 per ton to its value.

The other contractor, however, has no fabricating facilities and must buy his structural steel from a fabricator at approximately \$350.00 per ton. In this second example, the tax per ton varies by approximately \$8.00 between the two different contractors.

Such variances are inherent in the different methods of doing business and in the basic concept of the sales tax law. The integrated producer, whether a contractor or a farmer, who consumes an item which he produces pays little or no tax on such items. Such apparent inequality is partially corrected by the payment of income and other taxes. It cannot be completely eliminated without revolutionizing our entire sales tax structure. This bill in any event at most only shifts these variances in highly specialized cases and otherwise does nothing to achieve tax equality among contractors.

Inasmuch as the bill, if enacted, will create many serious problems of interpretation and application and does not accomplish its purpose, we respectfully submit that it is not in the public interest.

CHAIRMAN HAWKINS: Mr. Bosche, do I understand that the Kaiser Industries which you represent would be construed as an integrated contractor?

MR. BOSCHE: Well, we believe that this bill is aimed at our steel operations because they are integrated. The tax, which would have to be paid on a fabricated piece of material under this bill, would more or less be based on the value of the material when it first enters commerce. That's one of the problems with the bill. But let's

assume that it would enter into commerce when it is transported to the job site. We would then have to pay the tax on the full value of the material when it was transported to the job site. On the other hand, a fabricator-contractor would only have to pay a tax at the time he acquired the steel beam from us, when it only has approximately one-third of the value it has when it is sent to the job site. And finally, a contractor who has no fabricating facilities and has to purchase this beam from the contractor, would also pay the same tax that we would have to pay, that is Kaiser Steel, when he transports the completed beam to the job site.

CHAIRMAN HAWKINS: Do I understand that you mean that under this bill that you would actually pay more in trying to create equity, that the bill actually goes beyond that, and you would be paying more than the nonintegrated fabricator, for example?

MR. BOSCHE: Yes, I would call him an integrated fabricator-contractor. That is one of the points that I am trying to raise.

Another point that I think is very important is that the bill does not eliminate the discrimination, if there is such between contractors, or variances in the amount of tax the contractors have to pay in a particular piece of material which they require for use at the job site. One contractor, under the examples that I tried to give you, would have to pay a larger tax than another contractor under the provisions of this bill. If it is the aim of the bill to achieve equality among contractors, it does not do this.

CHAIRMAN HAWKINS: If the loophole is closed, if the bill is so worded that equity is created and at the same time all of the contractors or fabricators be placed on the basis of equality, would

you still object to the bill?

MR. BOSCHE: I think while I have never seen the Senate bill that was referred to by Mr. Currie, I think that that bill would perhaps come a lot closer to it than this particular bill.

CHAIRMAN HAWKINS: You're referring to Senate Bill 1207?

MR. BOSCHE: I believe so, sir. I've heard of it for the first time this morning when Mr. Currie presented his statement to the commission; and, while I have never read it, I believe from what he said that it probably would come a lot closer to it. However, under that kind of an approach, the construction industry as a whole would be charged with perhaps two or three times the sales tax that is now being paid; and everytime a person builds a house or purchases a house, his price will go up and I think it would raise very serious economic problems that would have to be gone into very thoroughly before any bill of that sort should be considered. I'm not really prepared to speak on that bill because, as I say, I've never seen it.

CHAIRMAN HAWKINS: You don't believe that there is any competitive disadvantage which California firms operate under at the present time which can be corrected?

MR. BOSCHE: Not as such. The integrated foreign contractor would have at the present time a tax advantage over the nonintegrated local contractor. The line of demarcation is not set by state line. The integrated California contractor would have, let's say, the same tax advantage as the foreign integrated contractor.

CHAIRMAN HAWKINS: Mr. Currie, I'd like to ask one question. Apparently from Mr. Bosche there, there is a threat of an increased tax which must be paid, and yet the statement which you make is to

some extent one which does not indicate any particular loss of revenue. I'm trying to reconcile these two statements. I know that generally you oppose any exemptions if they result in a loss of revenue. Now you don't assume in this statement that there is any loss of revenue, and there is a possibility that some may be gained. Just what is the position with regard to that phase of this problem that the Department of Finance actually opposes something which may be increasing revenue?

MR. CURRIE: I was not in opposition to the bill. I'm sorry but I didn't make myself clear. We had just two technical points, one of them is this definition of sales price in here which is very loose and it is much, much tighter in that Senate bill of 1949. We were just calling that to the attention of the committee - not in opposition to this bill. If this very loose definition were construed as relieving present taxpayers from tax because the value of the material was at the time it first entered into commerce, then we could lose revenue apparently. If, however, the definition in Senate Bill 1207 were applied, we would probably pick up revenue. We have no position...

CHAIRMAN HAWKINS: Assuming that the technical deficiencies are corrected, what would be the position of the department then? No position?

MR. CURRIE: We would not take a position on this bill. That's my reaction. This is a very technical subject, Mr. Hawkins. I just call your attention to the fact that Harry Say is here and is in a far better position to talk on the technical aspects of this than I am.

CHAIRMAN HAWKINS: I think, perhaps, it might be well if someone would present some rather clear illustrations of the operations of

the bill itself. I think we've had the opposition. I didn't know whether Mr. Bosche was opposing or actually supporting the bill.

ASSEMBLYMAN ALAN G. PATTEE: I'd like to ask either one of you gentlemen this question. Mr. Currie, since you know this S.B. 1207, is the wording in S.B. 1207 different than any other of the provisions that you state here?

MR. CURRIE: I'm sorry, Mr. Pattee, I didn't bring a copy.

ASSEMBLYMAN PATTEE: I understand you think S.B. 1207 is a better bill. You state here it's more or less the same type of bill.

MR. CURRIE: You mean the purpose is the same?

ASSEMBLYMAN PATTEE: The purpose is the same.

MR. CURRIE: S.B. 1207 is a much, much tighter bill with respect to the definition of selling price and does have this other feature that I think is essential to any taxpayer in that it clearly states that it's prospective. It doesn't affect materials used in construction contracts which were underway at the time the legislation is passed.

ASSEMBLYMAN PATTEE: Mr. Bosche, you haven't seen that bill either?

MR. BOSCHE: No, sir.

ASSEMBLYMAN PATTEE: Maybe we ought to have that bill here if it's a better bill than this.

MR. CURRIE: I'm sure I could get you a copy of the bill very quickly if you would like to have me do that.

CHAIRMAN HAWKINS: Well, if it's the desire of the committee. Do you desire to have the bill before us? Actually it's not set for hearing. In effect it is, as much as A.B. 447 is, and this relates to the same subject. However, I hesitate a little bit to take up a

Senate bill without the Senator's request or his being present. Is it a '49 bill? Oh, we're going back pretty far then. I think we had better confine ourselves to A.B. 447. Any other questions on that? Mr. Say, could you clarify the subject for us?

MR. HARRY L. SAY: I'd like to make a couple of general observations about this subject. We have here a subject which many states have concerned themselves with. If what is desired is to place all contractors on a parity, probably the State of Washington has solved the problem, but I can see many objections that might be raised to its solution. One was presented by the Council of the City of Exeter. The State of Washington applies its tax to all contractors, and this is the tax paid by the person who is having his real property improved, or repaired or reconditioned or rehabilitated or acted upon in any manner whatsoever. Now, of course, the other alternatives, I suppose, to put all contractors on a parity would absolutely be to not impose any tax whatsoever. Now someone suggested a while ago as to how did this problem arise. This problem arose because the California suppliers, that is, the California contractor, felt that the out-of-state integrated contractor had an advantage over him. Now I don't believe that it's possible to solve a problem with integration business by simply writing in the statute some terms without setting forth the proper standards.

There is one matter that I do want to call to the committee's attention in all fairness. I don't believe that this bill as it was drafted is constitutional. It has one very, very bad defect in it. It places your nonresident in a much less favorable position than your resident. Now I think whenever that happens the bill would

undoubtedly fall. I know of no.....

CHAIRMAN HAWKINS: Would you point it out on the bill, Mr. Say?

MR. SAY: What it provides for here, if you will notice, is that if any reimbursement is made for the tax by the California contractor, this section applies only when property used in fulfilling a construction contract loses its identity in process and only where it was not purchased from another or, if so purchased, the cost of property to the user did not include any amount paid by him to another in reimbursement of such other for any tax paid. The out-of-state supplier, of course, would not reimburse anyone for sales tax; however, there would be reimbursement made in the states that we are legislating against nonresidents, which I think is a fundamental equality of the legislation. I think that's a well established principle of law. You can't treat nonresidents less favorable than you do California residents. The bill itself is rather difficult to understand. I think that if the committee desires this type of legislation that this is a matter which ought to be given considerable study to see if we couldn't draft something that would be much clearer than the legislation we have before us here. There just doesn't seem to be any standard set up in this bill to guide the tax administrator in attempting to treat everybody on a parity. Mr. Currie pointed out some of those objections and so did Mr. Bosche. I would be very happy to attempt to answer any questions the members of the committee would have.

ASSEMBLYMAN JOHN L. E. COLLIER: Mr. Chairman, I was just reading in this bill where it says the Legislature hereby declares that the purpose of this section is to place California contractors on an

equal footing tax-wise with out-of-state contractors. Now, I guess Mr. Weinberger, in introducing this bill, is trying to correct some inequity. Just what is he trying to do and what industry is he trying to affect in this particular bill? There's always a reason for a bill, and what is the reason for a bill. I'd like to know the background as to why he introduced the bill before I'd be in a position to try to evaluate the opposition because I don't know enough about the bill. Why was the bill introduced and for what purpose and who is he trying to bring under.....

CHAIRMAN HAWKINS: Well, I suppose, Mr. Collier, that the only person who could really answer that question is Mr. Weinberger.

ASSEMBLYMAN COLLIER: Well, I'd certainly like to have those questions answered before I try to form a conclusion on testimony given in opposition to the bill. I'd like to know a little more history about the bill.

CHAIRMAN HAWKINS: Well, surely that question isn't going to be answered today because Mr. Weinberger isn't here. He was invited to be here. He had requested that this bill be studied by the interim committee. So all that we can do in carrying out that mandate is to set the bills for hearing, notify the sponsors and hope that they will appear. When they don't, we just can't do anything about it.

ASSEMBLYMAN COLLIER: May I make this suggestion? Maybe there might be somebody in the audience that is sponsoring this bill and getting Mr. Weinberger to handle it.

CHAIRMAN HAWKINS: Is there anyone in the audience who supports this bill, either the sponsor who merely supports it because of its provisions? Apparently there's no one in the audience who wishes to

say anything in support of the bill.

ASSEMBLYMAN CARL BRITSCHGI: Mr. Say, how much money do you expect that we would gain by this type of legislative procedure if it went in? Just a rough estimate.

MR. SAY: Well, that's a very, very difficult question.

ASSEMBLYMAN BRITSCHGI: Are we talking about a lot of dollars or are we just talking about a few dollars?

MR. SAY: No, there probably would be considerable money. It would be very difficult to estimate that. It's not the general practice. Mr. Bosche would be in a better position to analyze that, but I understand that most companies work through contractors. That's rather the unusual case. I would think myself that suppliers wouldn't want to be in a competition with all the contractors in order to take the business away from the contractor. Isn't that pretty true generally, Mr. Bosche?

ASSEMBLYMAN BRITSCHGI: I was just trying to follow the field on down, Mr. Chairman, on that as to whether we're trying to look for a new source of income or whether we're trying to equalize something.

MR. SAY: Unless you adopted the Washington solution to this problem. Certainly the motivating factor, I don't believe, behind this bill is additional revenue. That would be my best guess.

ASSEMBLYMAN PATTEE: You think what it is then is an equalizing bill. We're trying to equalize our local people on the same basis that the outside stater is supposed to be getting now, is that it?

MR. SAY: I think the purpose of the bill is an attempt to put an integrated business on the same basis with a nonintegrated business.

ASSEMBLYMAN PATTEE: I see. Do you think it would run the cost

of building up like Mr. Bosche was saying?

MR. SAY: Well, I wouldn't have any answer to that, Mr. Pattee. I imagine any cost that goes into a building program is going to increase the cost to the consumer, undoubtedly. I could answer this question, if you put the tax in the entire consideration, undoubtedly it would increase the cost of construction.

ASSEMBLYMAN S. C. MASTERSON: I wanted to ask a couple of questions. First, what is the tax advantage approximately that an integrated contractor has as against a nonintegrated contractor; and secondly, what tax advantage does an outside contractor taking a contract in California have over the California contractor? And thirdly, I think I have a third question, is there a disadvantage that we're trying to get at in this bill relating to a California contractor building on an out-of-state job?

MR. SAY: No, that latter problem has been solved. First, the advantage is this, Mr. Masterson. The use tax applies, of course, to whatever is paid for property that is used in California to improve real property. Now if it happens that the producer of the materials is also the contractor, the processor, he owns the realty, he didn't pay anything for the materials, then there wouldn't be any tax, because he didn't buy any property to improve real property in California. Now if any place during that step, a contractor has to purchase property whether he purchases in California or outside of California, he is subject to the use tax measure. If he purchases outside of California and its proper positions are present, he would be subject to use tax with respect to whatever he paid for that property. Now if he bought the property in California, the vendor

would be subject to sales tax. So if you have two contractors doing business in exactly the same way today, there isn't any discriminations as one against the other. It's only when you do business in a different manner that this problem comes up.

ASSEMBLYMAN MASTERSON: Mr. Bosche's analysis then in that connection was correct.

MR. SAY: That's correct. Do I answer your question, Mr. Masterson?

ASSEMBLYMAN MASTERSON: Yes, it does.

MR. SAY: I would like to say, Mr. Chairman, that myself and any other employees of the Board would be very happy to cooperate with your subcommittee in a study of this problem in trying to aid to a solution to it and to give you the advantage of data or statistics we may have.

ASSEMBLYMAN MASTERSON: That answers my first question, Mr. Chairman, but there's another one in my mind. Could we in any constitutional manner put the California contractor on a better basis than the outside integrated contractor? We want to encourage California business, but can we do it by this kind of procedure? You've indicated before that this bill was unconstitutional, now would these provisions that were in this other bill or something else be possible to meet that problem?

MR. SAY: I think that possibly after study is given this problem and we find out exactly what problem desires to be solved without just guessing about the matter, I think it would be possible to write a tax measure which would represent the views of this committee. Yes, I do.

ASSEMBLYMAN MASTERSON: Well, I mean specifically the view that's

expressed in this bill that what they're trying to do is encourage California.....

MR. SAY: Well, Mr. Bosche is here, and I understand Kaiser is in California and he's opposing the bill so he probably doesn't think that it's going to do Kaiser any good.

CHAIRMAN HAWKINS: Well, let's ask Mr. Bosche that, I thought we tried to establish that, if a bill following Judge Masterson's question there, could be so worded that the technical objections could be removed which would favor California companies as such, would the Kaiser Industries, for example, support such a bill rather than oppose it?

MR. BOSCHE: I feel that under present law there is no discrimination against California contractors as such. The discrimination only arises, or possible discrimination or variances in the tax application, arises only as between integrated and nonintegrated contractors, and it doesn't matter whether they're in the State or outside the State.

CHAIRMAN HAWKINS: Then you don't believe that the bill actually does what it proposes to do; and furthermore, you don't believe that there is any such problem with respect to boundary lines, then.

MR. BOSCHE: That's correct.

CHAIRMAN HAWKINS: Well then, Mr. Say, let's get back to you then. Within the State itself then, do we have two manufacturers, one of whom would be enjoying a tax advantage that the other one does not at the present time? In other words, is there a problem which should be reached by such a bill?

MR. SAY: Well again that depends, very much, sir, on what meaning the sponsor of this bill has. Let me put it another way, Mr. Hawkins.

CHAIRMAN HAWKINS: Well, getting away from the views of the

sponsor, I don't know his views, but we're trying to find out whether or not there's any need for any legislation of any kind.

MR. SAY: Let's illustrate this problem in another fashion. This problem of integration is - we wrestle and you wrestle with that problem through day to day. For example Standard Oil Company has one company that operates a station. If Standard Oil makes a sale to Standard Stations Incorporated and if Standard Stations Incorporated is a consumer, the sales tax applies, for example, lubricating oils. Now if Standard Stations would resolve that there wasn't any sale between Standard Oil and Standard Stations, there wouldn't be any tax. Now that's what I meant a while ago when I said it was very difficult to solve questions where you would have an integrated or a nonintegrated business. That's very much up to the businessman.

CHAIRMAN HAWKINS: It gets down to social philosophy whether we want to encourage big business or not, then doesn't it?

MR. SAY: Well, I'm not qualified to talk on that subject. I don't know that that subject is involved in this matter. I doubt it very much. But if we had an integrated business, there's no transactions between the various divisions of the company, there is no sales tax. When you form separate corporations and are willing to subsidiary yourself to the parent, the two subsidiaries do business between them, you apply the tax. It's very much a question, I think, of how the board of directors and the stockholders desire to operate the business; and we attempt to apply the tax in accordance with the business structure they set up.

CHAIRMAN HAWKINS: At this time we will hear from Mr. Hamlin who I think is going to present a general statement with respect to

the background and history of the sales and use tax of the State Board of Equalization.

MR. ROBERT G. HAMLIN: Mr. Chairman and members of the committee, in Mr. Peirce's absence, I have a prepared statement to present to the committee, a copy of which has been furnished to each of the members. Our statement is general in nature and attempts to state the general position of the Board of Equalization with a little background of the sales and use tax in the State of California.

The California Retail Sales Tax Act was enacted in 1933 and became effective on August 1 of that year. It was enacted to provide funds to replace the revenue loss to the State by the return of utility property to the local tax rolls as part of the Riley-Stewart Plan and to give relief to owners of real property. The income from the State sales tax and from the use tax, which was adopted in 1935, is almost the total amount required for the State's outlay for the support of schools and for the maintenance of the University of California, the State colleges, and other State establishments for public education.

Until July 1, 1935, the tax rate was $2\frac{1}{2}$ percent. On that date sales of food products for human consumption, except prepared meals, were exempted, the Use Tax Act was adopted, and the rate of both the sales and use tax was fixed at 3 percent. The purpose of the use tax was to protect California business from out-of-state competition, which would otherwise enjoy a 3 percent advantage over California retailers, and to raise additional State revenue.

Exemption of food products, through the 1935 amendment, has done much to remove such irritation as the buying public may have felt because of the imposition of the sales tax. Those, who by reason of

limited resources, have been required to spend a relatively large share of their income for food doubtless have found this exemption of appreciable benefit. This, however, has been the only major exemption added since the law was first enacted in 1933.

For the fiscal year ended on June 30, 1956, over 38 percent of general taxes and fees collected by the State resulted from the retail sales and use tax. Over \$731,000,000 was returned to the State treasury for the fiscal year ended June 30, 1957. Of this amount, more than \$131,000,000, less the cost of administration, was returned to the cities and counties which have contracted with the State. This result is despite the fact that since July 1, 1935, some twelve additional exemptions have been adopted. None of these exemptions, however, have been of great consequence from a revenue standpoint. They do, however, increase the cost of administration and place an undue burden on retailers.

In its 1941-1942 Biennial Report, the Board of Equalization issued the following statement regarding exemptions:

"Sound tax policy so strongly indicates lack of wisdom of further exemptions in our tax structure that suggestions for the expansion of these devices for minimizing public revenues do not merit extended discussion. Particularly is this true insofar as the sales tax is concerned. This can be effective as a revenue producer only if its present broad base is maintained. Plausible arguments may be advanced in favor of many exemption proposals. Every exemption, however, encourages pressure for further exemptions with the ultimate result that the sales tax will be neither effective as a source of revenue nor equitable as a tax measure. Thus, suggestions that revenues should be

reduced through the medium of exemptions are unsound and must be rejected if we are to maintain a workable tax structure."

Since April 1, 1956, State-administered local sales and use tax ordinances which had been adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law have been in effect. Seven counties and the cities therein adopted ordinances effective on April 1, 1956. As of January 1, 1958, 47 counties and 293 cities have contracted with the State Board of Equalization for the collection of local sales and use taxes. This represents over 86 percent of the State tax base. As each local ordinance incorporates by reference most of the provisions of the State law, all exemptions in the State law are therefore a part of the local ordinance and any subsequently enacted exemption in the State law automatically would become a part of the local ordinance.

At the present time, the Bradley-Burns law provides for two local tax exemptions in addition to those found in the State law. These are, from the sales tax, sales to common carriers and waterborne vessels of tangible personal property for use principally in the operation of such carriers and vessels outside the county in which the sale is made; and from the use tax exclusive of the county use tax, the use of such property and from both the city and county use taxes, the use of property by public utilities in the transportation or transmission of persons, property or communications, or in the generation, transmission or distribution of gas or electricity.

These exemptions have greatly complicated the administration of the local taxes, and have prevented them from being truly uniform so as to apply whenever the State tax applies, which was the principle objective of the system of State-administered local taxes to be reported on the same return form as the State tax, and otherwise intended

to be administered concurrently with the State tax.

Since the cities now have a 25 percent interest in the sales and use tax revenue collected by the State, the study of additional exemptions should take into consideration that they will narrow not only the base of the State 3 percent tax, but also that of the State-administered local taxes.

The existence of an exemption adds materially to the complexities of the law. Distinction between taxable and nontaxable transactions become so illogical as to provoke time-consuming controversies. Frequently they lead to further exemptions, but no improvement in the equity and fairness of the tax. No small part of the success achieved with respect to the sales and use taxes in California is attributable to the fact that the Legislature has wisely avoided the complications and pitfalls encountered when a State enters upon a program of tax exemptions.

I wish to repeat what Mr. Say has said, that the staff of the Board is more than happy to assist the subcommittee with any problems that may arise in the consideration of individual bills.

CHAIRMAN HAWKINS: Thank you, Mr. Hamlin.

ASSEMBLYMAN COLLIER: I would like to ask the gentleman this since he says there are two inequities in the local approach to the sales tax. Those two are the sales to common carriers and waterborne vessels - tangible personal property. Vessels outside the county in which the sale is made. Would you make any recommendations as to any corrective measures that the Legislature should undertake to correct these discrepancies as you so call in your report here.

MR. HAMLIN: I did not necessarily say they were inequitable. I

intended to point out that there are differences between the State and the local ordinances under which we collect the local taxes; and because of that difference, it has created very major administrative problems in the collection of the local tax in connection with our State tax. I think there perhaps might be some clarification by amendments to those provisions, but Mr. Say, or one of the other members of the staff of the sales tax division, would be more competent to speak on the specific language of those exemptions than I am.

CHAIRMAN HAWKINS: Thank you, Mr. Hamlin. At this time let us get back to the next bill, A.B. 3118. You are in support of the bill, aren't you, Mr. Desch?

MR. FRED DESCH: Yes.

CHAIRMAN HAWKINS: We wanted to have the argument in support of the bill first.

MR. DESCH: I represent the Trailer Coach Association, the trade organization whose membership is composed of the majority of the manufacturers, dealers and suppliers of the industry in the 11 western states.

Assembly Bill No. 3118 by Assemblyman Glenn Coolidge, introduced at our request at the Regular Session of the 1957 Legislature, is not a tax exemption bill in the sense that there would be any loss of revenue now imposed and accruing to the State.

The bill is very brief, and with your indulgence I will read it:

"Section 6388 is added to the Revenue and Taxation Code to read: There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any trailer coach purchased for use solely outside this State and driven or moved from the

retailer's or manufacturer's place of business in this State directly to any point outside this State within 30 days from and after the date of sale."

What the Trailer Coach Association hopes to accomplish by the enactment of this bill is to do away with double taxation. A trailer coach is in the same category as any other type of merchandise which is shipped outside of the State under proper certification. It is exempt from the sales tax if properly invoiced and shipped by a manufacturer, dealer or transporter. However, if any individual from either within or without this State takes personal delivery of a trailer coach from either a manufacturer, dealer or transporter, he is charged a sales tax. If the purchaser is from an adjoining state which levies a sales tax, he is also subject to the sales tax in his home state, where the tax is legally due. As you can readily see, he is charged for sales tax by the State of California and by the state where he legally maintains his residence.

As a result of this double taxation, very few sales have been made to out-of-state consumers, other than through proper channels of delivery to franchised dealers in his home state.

Numerous requests are received by the Trailer Coach Association from time to time by out-of-state residents who would like to come to California, pick up a trailer coach, and spend a few weeks sightseeing. They are generally informed that if they take personal delivery of the trailer, that they will be charged a California sales tax, and that upon registering this vehicle in their home state, they will again be subject to a sales tax levy, provided their state has such a law. Naturally we seldom hear from these people again, and

our manufacturers lose a sale.

The State of Michigan at the present time provides for such exemption of sales tax in the case of automobiles. Subsection (j) of Section 4a of Act No. 167 of the Public Acts of 1953 as last amended by Act No. 204 of the Public Act of 1953, being Section 205.54a of the Compiled Laws of 1948, reads as follows:

"Section 4a. No person subject to tax under this act need include in the amount of his gross proceeds used for the computation of the tax any sales of tangible personal property: (j) To persons of new motor vehicles for which a special registration is secured in accordance with subsection (c) of Section 802 of Act No. 300 of the Public Acts of 1949, as amended, being Section 257.802 of the Compiled Laws of 1948."

The special registration referred to is contained in Enrolled House Bill No. 144, Act 77, Public Acts of 1955, being Subsection "e" of Section 226 of Act No. 300 Public Acts of 1949 as last amended by Act No. 179 of the Public Acts of 1953, being Section 257.226 of the Compiled Laws of 1948, and reads as follows:

"Section 226(e). A special registration may be issued for any new vehicle purchased outside of this state and delivered in Michigan to a nonresident purchaser by the manufacturer of such vehicle for removal to the outstate residence of the purchaser and a special registration may be issued for any new vehicle purchased inside of this state and delivered in Michigan to a nonresident purchaser by a dealer of such vehicle for removal to outstate residence of purchaser. Such special registration shall be valid for not to exceed 30 days from the date of issue and a fee shall be collected for each such

registration as provided in section 802 of chapter 7 of this Act. Such special registration may be in such form as determined by the secretary of state. When a dealer makes a retail sale of a new motor vehicle to a nonresident purchaser, such dealer shall furnish to the secretary of state an affidavit, together with the other forms required by the secretary of state for registration when a sale of a new motor vehicle is made by the dealer. Such affidavit shall be made by the nonresident purchaser and it shall contain the following: the out-state address of the nonresident purchaser, that the purchaser is a nonresident of Michigan, that the motor vehicle is purchased for out-state registration, that such vehicle is not purchased for transfer to a Michigan resident, and such other information as may be desired by the secretary of state."

There is nothing complicated about the above procedure followed by the State of Michigan for many years, and I have no doubt that many of you, like myself, have at one time or another purchased a new automobile from a California dealer, paid the California sales tax, and subsequently took delivery of the car in Michigan.

Under the provisions of Section 140.3 of the California Vehicle Code, a one-trip permit may now be issued for a vehicle otherwise subject to registration by the department for a continuous trip from a place within this State to another place either within or without the State. The only modification to this section would be in the case of a purchaser from out-of-state for 30 days to see and enjoy the beauties of California. Each such purchaser, if he remained only 20 days in California would spend, I am sure, a minimum of \$10 per day, or \$200 which would be added to the economy of the State.

California is the largest single producing State in the country in the manufacture of trailer coaches, production in 1957 being approximately 30 percent of national production, with a retail dollar value of nearly \$135,000,000. Approximately 60 percent of California production is sold to California dealers, producing a sales tax revenue of nearly three and one-quarter million dollars.

I feel quite certain that with the enactment of such an amendment to our Revenue and Taxation and Vehicle Codes, that many people from outside California would be attracted to purchase a California built trailer coach, recognized throughout the industry for its fine workmanship, plumbing, electrical and heating installations.

As indicated previously, I see no loss of revenue to the State of California by the enactment of such a bill. I trust that this committee will consider its merits and give a favorable recommendation for its adoption at the next Regular Session of the Legislature.

Appreciating the courtesy and time allowed to present this matter, I am, Very truly yours.

CHAIRMAN HAWKINS: Thank you, Mr. Desch. Suppose you, Mr. Currie, present the statement from the Department of Finance and then Mr. Desch, if you will remain here, we'll open the matter up for questions after that.

MR. CURRIE: This is another one page statement on it, I'd like to read it.

This bill would exempt from sales tax the gross receipts from sales of trailer coaches purchased for use solely outside the State and removed from the State within 30 days of the date of sale. The department is unable to provide an estimate of the General Fund

revenue involved in this proposed exemption.

Although the intent of this legislation is to further the manufacture of house trailers in California, the Department of Finance feels that the exemption would establish an undesirable precedent. Once allowed with respect to trailer coaches, the principle of exempting sales of tangible personal property to be used out-of-state would be likely to extend to other items and commodities. Bills to exempt bunker fuel purchased in California and used by ships after leaving this State have been before the Legislature on more than one occasion in the past. There have been similar proposals regarding trucks used in interstate commerce. If the exemption is desirable for trailer coaches, it could be advocated with equal force in favor of other trailers, automobiles, trucks and, in fact, any commodity produced here and purchased for use elsewhere, with delivery taken in California.

The proposed exemption would raise a number of difficulties, for both the dealers and the Board of Equalization. For example, the dealer, who is legally liable for the tax, would not know the intent of the purchaser. In order to be relieved of tax liability on a sale of this type, the seller would be forced to provide proof that his customer intended to use the trailer solely outside this State, that he did not use it in California, and that he did in fact remove it from the the State within 30 days of the date of sale. If any of these conditions were violated, the trailer would not be exempt from tax and the dealer would be liable for tax payment. The cost of obtaining such proof, coupled with the tax liability where the conditions had been violated, might well outweigh the proposed tax advantage.

Moreover, the dealer apparently would become liable for the tax if the trailer were ever returned to the State by the purchaser, or a vendee of the purchaser or any other person. This possibility would create a further potential tax liability for California dealers and additional administrative difficulties for the tax administrators.

The exemption would also result in additional cost to the Board of Equalization. In auditing the dealer's books, it would be necessary to verify the validity of each exemption and to levy a deficiency assessment where proof was not available. Here again, there would be an added expense to the dealer.

Thus, although the proposed exemption would seem on the surface to have advantages in stimulating California business, it could result in a large revenue loss. It could produce a material increase in compliance costs for the dealers involved and, like most other sales tax exemptions, it is likely to cause a gradual breakdown of the sales tax base. For these reasons, the Department of Finance recommends against the adoption of this proposal.

Mr. Chairman, just as evidence of the fact that we're not building a boogie-man here, I'd like to recall to you the fact that we, in 1935, exempted food from the sales tax. There were progressive exemptions which followed that. One of the first was dairy cattle, then feed for dairy cattle, then a little later fertilizer to be used on land on which food products were to be grown, and we ended in 1955 with an exemption of ice used in transporting food products interstate. For some reason we didn't exempt ice used in transporting food products intra-state.

I'm just confident that this type of an exemption would extend

until, regardless of Michigan's experience with it, we would have a number of additional exemptions on sales of tangible personal property allegedly for use outside the State whether it was actually used outside the State or not. I don't think the dealer would know, and I don't think anybody else would know.

That's the basis of our opposition to this proposal which does have, certainly, a lot of merit on its surface.

CHAIRMAN HAWKINS: Any questions either of Mr. Currie or Mr. Desch?

ASSEMBLYMAN MASTERSON: Mr. Currie, if this encouraged people to come and spend their money in California, when they come and pick up their trailer, I assume this would be advertised by the trailer dealers just as the automobile dealers and manufacturers do, you get your vacation thrown in free by saving the freighting costs, actually wouldn't we have a revenue increase as a result of the increased spending in the economy of the State? These people are going to be buying all kinds of junk here in California.

MR. CURRIE: Yes, Mr. Masterson. I think it would make a very plausible argument right down that way, but I can't forget that last year 1,850,000 vehicles crossed the state line to visit California, out-of-state cars which came to California, and undoubtedly some of them come here to buy a trailer; but I think we'd soon find that other people were saying, "I sold a man a suit of clothes. He's going to wear it in the State of Washington. I want a tax exemption on it. It stimulates business." I think you can just follow that.....

ASSEMBLYMAN MASTERSON: That wouldn't be so unless they came here for the purpose.

MR. CURRIE: No, if we once establish this principle of a tax exemption on material on which delivery is taken in California, then I think you lose control of the whole situation. That's my point.

ASSEMBLYMAN MASTERSON: Has Michigan successfully dealt with it as far as automobiles are concerned?

MR. CURRIE: Michigan does have this feature, yes. I don't know how successful. I haven't any idea of what type of evasion there may be under the Michigan rule. It's perfectly true that a motor vehicle is in a somewhat different situation in that it must be registered somewhere.

ASSEMBLYMAN MASTERSON: A trailer has to be also registered.

MR. CURRIE: I am very sincerely afraid of the principle that is being established because I think it can lead, just as this food exemption, finally led to ice used in refrigerator cars. It was beyond the scope of imagination, I think, in 1935.

ASSEMBLYMAN COLLIER: Actually fear is more your opposition than anything else as I can see here. Don't local stores, for instance, like Weinstock Lubin here in Sacramento, if they sold to somebody in another county, another city, and if they had a sales tax there, if they sold that to be delivered to those people over there and not picked up here by themselves, wouldn't they be exempt from that sales tax?

MR. CURRIE: I think if there was no sales tax in that other area, that's my understanding. I may be wrong on that point; however, I do want to point out that if you go to Weinstock Lubin to buy a gift to be shipped to another state, you have to let them mail it. You can't take delivery of it and mail it yourself and be exempt from

the tax.

ASSEMBLYMAN COLLIER: Well, it's just a case of who does the shipping. Anybody can do the shipping, and I think the same principle is involved here.

MR. CURRIE: Well, no, it's the matter of taking delivery. Once you have taken possession of the property, I think that's when the tax has to apply and it doesn't make much difference whether it's in-state or out-of-state, otherwise we break down a principle.

ASSEMBLYMAN COLLIER: Can you see any loopholes in the law whereby I could go across into Arizona, set up a trailer agency, and through me sell the trailers in California to Californians through my agency in Arizona and shoot them back over here, in other words, to bypass the sales tax.

MR. CURRIE: Mr. Collier, we have some awfully good tax administrators in California, and I think they'd catch up with you pretty fast. I really do.

MR. DESCH: I might like to say, Mr. Chairman and members of the committee, that every one of these dealers and the manufacturers are in favor of this particular bill and in their auditing, when the State Board of Equalization audits the records of the dealer and the manufacturer, they have to account by affidavit for every trailer as to where that trailer went, which dealer took it and whether it was for resale, whether they were shipped to the State of Arizona or the 11 adjoining states which we serve. Every trailer is accounted for by affidavit; and on that basis, the sales tax is figured whether the manufacturer or the dealer owe any additional tax. So that our encouragement here is for the out-of-state purchaser to buy that from

a dealer in his home state and then arrange with a manufacturer here through proper affidavit and certification to just pick it up, have the advantage of two or three weeks in the State and then go back home, leave some money here with us. I don't see any difficulty at all in administration here, and as I say, the State of Michigan has done this for I think almost 20 years. They have no trouble back there.

CHAIRMAN HAWKINS: Any additional questions? Does that complete your testimony Mr. Desch? Anyone else wish to testify on Assembly Bill 3118?

Is there anyone in the audience who wishes to testify on any one of these bills or any additional matter before this committee?

We have present and registered Mr. W. T. Denny from the Board of Equalization, Sales and Use Tax Division; Mr. E. H. Stetson from the State Board of Equalization; Mr. H. E. Abbott from the State Board of Equalization; and Mr. John Vickerman from the Legislative Analyst's office.

The meeting will stand adjourned.

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EXHIBIT "A"

W E S T E R N U N I O N
T E L E G R A M

1958 Januray 15
11:05 a.m.

HON AUGUSTUS HAWKINS, CHAIRMAN
ROOM 3138 STATE CAPITOL
SACRAMENTO CALIFORNIA

REF A. B. 1470 WE FEEL THAT DIESEL FUEL USED TO PROPEL VEHICLES
SHOULD NOT BE SUBJECT TO SALES TAX ANYMORE THAN GASOLINE STOP SALES
TAX WAS ORIGINALLY APPLIED WHEN THERE WAS NO FUEL TAX. STOP STRONGLY
URGE ELIMINATION STOP WE ALSO FEEL REFINERS SHOULD NOT BE COMPELLED
TO COLLECT DIESEL TAX AS THEY CANNOT TAX LIEN TRUCKS FOR NON PAYMENT
LIKE STATE STOP GREATLY REGRET INABILITY TO ATTEND HEARING STOP

NEWHALL REFINING CO., INC.
WILLIAM D. PARKS, PRESIDENT
P. O. BOX 638
NEWHALL, CALIFORNIA

EXHIBIT "B"

ASSEMBLY
CALIFORNIA LEGISLATURE
WALTER I. DAHL
Chairman
Committee on Revenue and Taxation

January 6, 1958

Honorable Augustus F. Hawkins
Room 4005, State Capitol
Sacramento, California

Dear Gus:

I have just been informed that Mr. Jack Worthington, the principal witness for Assembly Bill 1470, is ill and will enter a hospital for a confinement of considerable length. This bill, as you know, was scheduled for hearing before your Subcommittee on Sales and Use Taxes on January 16.

Therefore, I would appreciate it if you would delete this bill from your agenda for possible consideration at a later date.

Cordially yours

/s/ WALTER

WALTER DAHL

WD:mr

EXHIBIT "C"

LEAGUE OF CALIFORNIA CITIES

Berkeley 5, California
December 17, 1957

Mrs. Margaret Raty
Secretary, Assembly Interim
Committee on Revenue and Taxation
Room 3138, State Capitol
Sacramento 14, California

Dear Mrs. Raty:

We wish to thank you for notice of hearing by the subcommittee on sales and use taxes of Assembly Bills 447, 1470 and 3118. The League Board of Directors will be meeting on January 15 - 17 inclusive and it will not be possible, therefore, for a member of the League staff to be present at the committee hearing.

Most of the cities and counties in California are interested in sales and use taxes and in the effective and equitable administration of such taxes. This tax source is now an important part of the municipal tax base. The general position of the League of California Cities has been against further tax exemption. The reason for this opposition is that loss of such revenue must be replaced by other revenue and the cost of administering tax exemptions is an increased burden on both the retailer and the State Board of Equalization. To the extent that it is a burden on the State Board of Equalization, it further reduces income from this source of revenue. While we are not in favor of any inequitable tax, we doubt that there is any inequity in the problem presented by A.B. 1470 in view of the burden placed on expenditure of State funds by such equipment and in view of the material relief granted to the industry by the substantial reduction in the gross receipts tax at the last session of the legislature.

We will join with the Director of Finance and the State Board of Equalization in the views they express with respect to such legislation. The interest of cities and counties is different only in degree.

Will you please explain to Mr. Hawkins why we are unable to attend the hearing.

Sincerely,

/s/ RICHARD CARPENTER

Richard Carpenter
Executive Director
and General Counsel

EXHIBIT "D"

JUDSON PACIFIC - MURPHY CORPORATION
STEEL CONSTRUCTION
4300 Eastshore Highway
Emeryville 8, Calif.

January 21, 1958

Honorable Augustus F. Hawkins
Assemblyman, Sixty-Second District
State Capitol
Sacramento 14, California

Dear Mr. Hawkins:

Thank you for your letter of January 20, 1958 reference
Assembly Bill 447.

I regret that I was not advised of the hearing held on January 16, 1958. The Use Tax section of the Sales & Use Tax Act provides that the tax be paid on the purchase price of materials used in construction contracts. Where the contractor is a producer of the materials used, ie, processes the raw material from the ground to the finished product, he has no cost on the material and no Use Tax is paid. As a specific example a contractor that mines the raw material and runs it through his cement kiln to produce cement and also owns his rock quarry and sand bar produces and pours cement in a structure without penalty of Use Tax. Whereas the contractor that buys the ready-mixed concrete pays, in most counties in California, 4% of the cost of the ready-mixed concrete he uses in the structures.

Our Corporation was formed in January 1945. At that time the cost of steel was \$45.00 a ton and the Use Tax on structural steel used in bridges or structures amounted to 3% or \$1.35. Today the steel cost us approximately \$160.00 a ton and the Use Tax of 4% is \$6.40 a ton. On a 10,000 ton structure the Use Tax amounts to \$64,000.00.

The best example of the inequity of the Use Tax now levied is the Carquinez Bridge. The American Bridge Division of U. S. Steel Corporation underbid us some \$30,000.00 on a \$9,000,000.00 structure. Had we been awarded the contract, we would have had to pay approximately \$100,000.00 in Use Tax to the State of California and also the steel would have been fabricated in our Emeryville shop and the economy of the State would have been augmented by a \$3,000,000.00 shop payroll. The American Bridge Division of U. S. Steel Corporation fabricated the steel for this bridge in Pennsylvania and the State of California will realize a very nominal Use Tax. U. S. Steel Corporation produces its steel from Ore mined from the ground and has no basis for the assessment of the Use Tax. However, it is presumed that they purchased certain Alloy materials used in the finished steel and that they will pay a Use Tax on the purchase of these Alloys.

While the State Highway Department ostensibly saved \$30,000.00 in the cost of the bridge, the State of California lost a very minimum of \$90,000.00 Use Tax, some \$75,000.00 in payroll taxes and lost the effect of \$3,000,000.00 shop payroll which would have produced additional Sales Taxes, Gasoline Taxes, and Income Taxes. It is safe to say that this \$3,000,000.00 payroll would have produced an additional \$100,000.00 in taxes for the State. So the purported \$30,000.00 saving cost the State \$235,000.00 in revenues.

California needs the independent contractors. Let me recite the facts with reference to the Richmond-San Rafael Bridge. As a member of a Joint Venture, we were awarded the contract to erect the superstructure for this Bridge on a bid of approximately \$21,000,000.00. American Bridge Division of U. S. Steel Corporation's bid approximately \$28,000,000.00. Bethlehem Steel Corporation was higher than that of the U. S. Steel Corporation. All the steel installed in this Bridge was fabricated in the State of California. The Joint Venture paid a very substantial Use Tax on the materials purchased for this Bridge and also paid a very substantial Use Tax on sub-contracts to other California Fabricators for fabricating parts of the steel used in this structure. The analogy speaks for itself. Without the independent contractor you can readily realize what future bridges and highway improvements requiring the installation of steel products would have cost the taxpayers of the State of California.

The Federal Government is currently spending millions in the support of small businesses. The State of California, through its discriminatory Use Tax, is forcing consolidations in the forming of integrated companies at the expense of its small businesses.

Formerly Consolidated Western Steel paid a Use Tax on all steel they used in the erection of buildings, and other structures requiring this steel. Today as a division of U. S. Steel Corporation, it pays no tax. Formerly Pacific Coast Aggregates paid a Use Tax on all of the concrete it poured in structures. It purchased a cement company and now owns its rock quarry and as an integrated company pays no Use Tax to the State of California.

Should your committee have another hearing, I would be pleased to attend.

Very truly yours,

Judson Pacific-Murphy Corporation

/s/ G. I. Lewis
Controller